

# State of Lawlessness and Police Atrocities in India: Quest for Police Reforms

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## Abstract

India's democratic framework most respectfully adheres to the intrinsic principles of fairness, non-arbitrariness and natural justice. The fairness and values of India's legal system is entirely dependent upon effective police accountability and fairness in their actions. Accountable and citizen centric police actions are vital for upholding the rule of law as enshrined in Indian Constitution. It is essential that law enforcement agencies must respect the basic inalienable rights of people, they are duty bound to protect. As the law and society is not static, the police agencies must also evolve and bring elements of fairness and modernisation in their functioning. An accountable police force instils confidence in the public, a fundamental element of a competent force. Only when citizens feel safe and believe that their police adhere to high standards of conduct do they respond with peaceful and law-abiding behaviour. It is evident that law enforcement agencies in India grapples with numerous challenges such as abuse of power, political interference, inadequate resources, lack of modernisation etc. Instances of misconduct and abuse of authority further erode public trust in the police. This research paper aims to address the issues mentioned above and highlights the police brutality and atrocities which has become a norm in the present era.

## 1 Introduction

The rising number of custodial crimes in various parts of our country is causing widespread concern, The action of police to a person accused and the mode of interrogations and the usage of third degree are strictly to be monitored and protected from. Complaints of police and other law enforcement authorities with the ability to arrest a person for questioning in connection with an investigation of an offence abusing their power and torturing suspects in custody are on the rise, the sadistic approach to get the so-called truth or the pleasure in barbaric measures of interrogation are in the rise. In recent years, such allegations have taken on alarming proportions, with reports of torture, abuse, injury<sup>2</sup>, extortion, sexual harassment, and death in custody. Custodial crimes are especially egregious and revolting as compared to other crimes because they represent a public servant's betrayal of custodial trust against a defenceless person.

The gruesome torture and death in the custody of a father and son in Tamil Nadu have again brought the question of police impunity to the forefront. The deaths were caused by organ failure rather than bullets, which would have been less traumatic<sup>3</sup>. The arrest of six police officers on murder charges in connection with the deaths of two men in custody has emboldened victims in India to speak out against targeted police violence and demand an end to impunity. Their deaths sparked outrage in a country where human rights activists claim minorities have long been victims of police brutality, and drew parallels to the death of George Floyd, a Black American man who sparked nationwide anti-racism demonstrations.

Police official's involvement in numerous instances of brazen encounters also raises a serious question mark on the functioning of police authorities as it amounts to gross violation of human rights and results in police brutality. The alleged encounter in which gangster Vikas Dubey was killed by Uttar Pradesh police is yet another example of India's crime-politics nexus<sup>4</sup>. Another encounter was of Mangesh Yadav and Anuj Pratap Singh, both were accused in Sultanpur robbery case. Another high-profile case of encounter was of Asad Ahmed, who was son of mafia turned politician and former Member of Parliament Late Atiq Ahmed. As per the reports, Over the past

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<sup>2</sup> Law Commission of India, 152nd Report on Custodial Crimes, 1994, , <https://lawcommissionofindia.nic.in/101-169/Report152.pdf> (last visited Mar 22, 2021).

<sup>3</sup> Bail denied to four policemen in Sathankulam custodial death case, The New Indian Express, , <https://www.newindianexpress.com/states/tamil-nadu/2020/nov/27/bail-denied-to-four-policemen-insathankulam-custodial-death-case-2228981.html> (last visited Mar 20, 2021).

<sup>4</sup> Killing Vikas Dubey doesn't end crime. For that, parties must let go of control over police, , <https://theprint.in/opinion/killing-vikas-dubey-doesnt-end-crime-for-that-parties-must-let-go-of-control-over-police/458597/> (last visited Mar 20, 2021).

seven years, State of Uttar Pradesh witnessed 12,964 encounters resulting in death of 207 criminals and 17 police officials<sup>5</sup>.

The glaring example of police brutality can be seen in the form of injuries being inflicted to persons detained by police authorities. One such landmark cases was *State of Uttar Pradesh v. Ram Sagar Yadav*<sup>6</sup> was at the center of the Law Commission of India's 113th report, which investigated the question of injuries in police custody. Wherein a victim named brijlal was mercilessly beaten by the hussaingunj police station house officer for raising the complaint against erred police officers to Superintendent of Police. Brij Lal was mercilessly beaten in police custody, he had nineteen bruises on his body. Later, Brij Lal's dying declaration was recorded in which he accused the Station House Officer and two police constables of causing his injuries by beating him up while he was in police custody. The Supreme Court was concerned that law enforcement officials should not abuse their authority to oppress innocent people who rely on them for defense. In these types of cases, police officers "bound by the bonds of a kind of brotherhood" frequently choose to remain quiet, and "when they chose to speak, they often put their own gloss on the facts and often pervert the evidence,"

The National Human Rights Commission was formed by Parliament to address such violations, but police torture continues unabated. In 2002, there were 1307 confirmed deaths in police and judicial custody in India, according to the most recent government statistics.<sup>7</sup>

In 2023, Union Minister of State for Home Nityanand Rai made a statement in the Lok Sabha highlighting the grave nature of police atrocities and custodial torture. He informed the house that total of 669 cases of custodial case were reported in 5 years from 2017 to 2022. Out of which 175 cases of deaths in police custody were reported during 2021-2022, 100 in 2020-2021, 112 in 2019-2021, 136 in 2018-2019 and 146 in 2017-2018<sup>8</sup>.

India's present day police force can be defined as a regime force that prioritizes the needs of politicians and powerful individuals over the rule of law and citizens' needs. Considering the fact that this structure was at a time when the Britishers were in power, it cannot be denied that obviously the aim of the structure was not at all to help the citizens, rather it was to exploit and suppress the Indians which is an accepted fact and can be observed through various instances of revolts and unnecessary arrests which were clearly illegal in nature. The sole power of the police was to curb the voices of Indians in every possible manner. Throughout the 1960s, several state legislatures took measures to create commissions to study police issues and make recommendations for reforms. But in a land where even the transfer of power from British hands had to be performed at midnight on the advice of astrologers, seeking an auspicious moment to replace the Police Act of 1861 has proved difficult. As a report by the National Herald states that: "*The British did not fashion Indian Police after the Scotland Yard. The Bobby, the quintessential London police constable who is modelled as a true friend of the citizens, was the last thing in the mind of the masters when they conceived the Indian Police*"<sup>9</sup>. The only objective was to provide a regime to curb crimes but to introduce a policy which has the effect of coercing the citizens to live in the form that the regime desired. That was eventually attained as well.

The deliberate use of verbal attacks or excessive force by the police force against a country's civilians is referred to as police brutality. Excessive force may take the form of physical violence or psychological coercion.

The 'Police Crimes' include indiscriminate Lathi charge on mobs, false arrests, fake encounters, custodial abuse, custodial death, custodial rape and molestation of women, other forms of harassments when dealing with the regular suspect, arrestees, and often rude conduct and rough treatment with innocent people as well.

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<sup>5</sup> <https://timesofindia.indiatimes.com/city/lucknow/in-seven-years-up-recorded-nearly-13k-police-encounters/articleshow/113104921.cms> (last visited on November 10, 2024).

<sup>6</sup> 1985 AIR 416

<sup>7</sup> Police in India, , <https://www.lawteacher.net/free-law-essays/indian-law/police-in-india.php> (last visited Mar 20, 2021).

<sup>8</sup> <https://nhrc.nic.in/sites/default/files/2023-2-09.pdf> (last visited April 21, 2024)

<sup>9</sup> Vibhuti Narain Raj, We have brutal and oppressive police because British masters designed it as such, National Herald, (March 10, 2021, 7:40 PM)

<https://www.nationalheraldindia.com/opinion/we-have-a-brutal-and-oppressive-police-because-british-masters-designed-it-as-such>

According to official figures from India's National Crime Records Bureau (NCRB), 109 civilians died because of police shootings in 2011. The highest number of civilian deaths were recorded in Uttar Pradesh and Rajasthan, mostly during riot control and suspected anti-extremism and anti-terrorist operations.<sup>10</sup> These statistics reflect the dire situation of the Indian standards and how they deal with their convicts. These issues often go non addressed by the State governments as well as Central governments.

Section 43 of the Bhartiya Nagarik Suraksha Sanhita 2023 allows law enforcement officers to use "any means possible" to make a forcefully resisted arrest. Many people have died because of the use of excessive force during protests in different parts of the world. In 2010, for example, at least 100 people were killed in Jammu and Kashmir as a result of excessive use of force against demonstrators.<sup>11</sup> But it is often observed that this treatment which is illegal and unconstitutional is usually approved by the authorities which is why often when demands are made regarding the action to be taken against such instances and the rejection by the respective authorities to take it into consideration reflects a different story.

## **2 Evolution of Police Force system in India**

The Constitution creates a legislative and executive separation of powers between the central government and the states. The state and central police forces have different roles. Local concerns such as crime prevention and investigation, as well as upholding law and order, are largely handled by state police forces. The central forces are specialized in dealing with such conflicts and provide the first response in cases of more serious internal security problems (e.g., terrorist attacks or insurgency-related violence). In contrast to local police, the Central Reserve Police Force is best equipped to defuse large-scale protests with the least amount of harm to life and property. In addition, the central forces help the defences forces with border protection.

The Rig and the Atharva Veda mention certain types of crimes known to the Vedic people, so the origins of police can be traced back to the early Vedic era. In fact, evidence suggests that security forces existed even during the Harappan era. Though no exact relation to the Vedic period's criminal justice system exists, the Mauryan period exhibits many of the same characteristics. The Arthashastra (310 BC) is a treatise on the criminal justice system written by Kautilya. It's written in the style of a modern-day police manual. DANVARIKA, ANTEVANSIKA, PRADESIKAS, MAHAMATRAS, RAJJUKAS, and so on are listed. Police were divided into three categories: dandpal, durgapal, and antpal.<sup>12</sup>

The GREEK Ambassador Magasthenese and the Chinese traveller Fa Hein have both written extensive accounts of the Gupta administration. Dandikas were the most senior officers at the time. Others are listed, such as Nagar Shreshthi and Rabasika. The criminal justice system that evolved during this period existed for another 500 to 600 years. The main difference is that the Mauryan system was centralized, while the Gupta system was decentralized. However, the basic structure of the police system, which included village police, city police, and palace police, remained consistent through kings.<sup>13</sup>

India is a union of 28 states and eight union territories. Since the jurisdictions of the union territories fall under the power of the central government, they are not part of the state. The Indian Constitution declares the Police and public order to be a state matter as per 7<sup>th</sup> Schedule of Constitution. This ensures that state governments oversee them. State governments set the rules and regulations that regulate the structure and activity of police forces. State governments set the rules and regulations that regulate the structure and activity of police forces. Each state/union territory has its law enforcement agency. In addition, the union government has established central police organizations for specialized work. This vast pool of skilled manpower has the ability to be a strong force for good in society if they are required to follow the law and kept responsible for their crimes against the general public.

However, in the case of Union Territories the subject falls under the jurisdiction of List I of 7<sup>th</sup> Schedule i.e. under the power of the Central government. There were also certain reports which predicted that some of powers

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<sup>10</sup> National Crime Records Bureau, , <https://ncrb.gov.in/en> (last visited Mar 28, 2021).

<sup>11</sup> AMNESTY INTERNATIONAL REPORT 2011: THE STATE OF THE WORLD'S HUMAN RIGHTS; 2011, .

<sup>12</sup> Aditya Singh, Police and policing in India - a historical perspective - iPleaders, <https://blog.ipleaders.in/police-policing-india-historical-perspective/> (last visited Mar 20, 2021).

<sup>13</sup> Anupama Sharma, *POLICE IN ANCIENT INDIA on JSTOR*, <https://www.jstor.org/stable/41855800?seq=1> (last visited Mar 20, 2021).

under this List with regard to the Central regime is being used against the interests of the Union Territories, which is why often it has observed that the government in the respective territory has requested or rather demanded for the transfer of such power under the Union territory but in spite of it they have managed to somehow avoid this discussed. Recently this demand was again asked when the Delhi government demanded for the same. The showdown between the Aam Aadmi Party Government and the Delhi Police reached the doorsteps of the Union Home Minister on Friday, with Chief Minister Arvind Kejriwal meeting Sushil Kumar Shinde to demand State government control over the police.<sup>14</sup>

### **3 Development of Police system in India through various committees and Commissions**

Several committees and commissions have been established before and after independence to consider different aspects of improving police governance effectiveness. The Police Act of 1861 established the Police as an organized agency in this country. Following the Indian Sepoy Mutiny of 1857, when Indian soldiers in the colonial army revolted against their British officers, this law was passed. Later, the mutiny turned into a revolt against British rule in India.<sup>15</sup>

The state governments were given control of state police forces under Section 3 of the 1861 Police Act<sup>16</sup>. The 2nd Police Commission was formed in 1902 to investigate the problems that resulted from the introduction of the Police Act of 1861. The Commission published a detailed report on the organisation of the police force, the adequacy of preparation, strength, and pay, the sufficiency of procedures for reporting crime and investigating offences, the adequacy of the Magistracy's oversight of the police, the power of senior officers over the investigation of crime, and the relationship between railway police and the police force. What's interesting to note is that it considered the police to be unreliable, deficient in preparation and organization, and widely viewed as "corrupt and authoritarian" even back then.

With the country's evolving economic, political, and social landscape, the need to rethink police governance has arisen many times since independence. Kerala founded the first Police Reforms Committee after independence in 1959. This was followed by a series of Police Commissions appointed by various state governments, mostly in the 1960s and 1970s (West Bengal in 1960-61, Punjab in 1961-62, Delhi in 1968, Tamil Nadu in 1971 to name a few). In 1966, the Administrative Reforms Commission established a Working Group on Police at the federal level.<sup>17</sup>

#### **i. Establishment of National Police Commission**

On November 15, 1977, the Indian government formed a National Police Commission. The Commission was established to conduct a new investigation into the position and efficiency of the police as both a law enforcement agency and an organization charged with protecting citizens' constitutional rights. It consisted of three reports. Between 1979 and 1981, the National Police Commission issued an 8-volume report with suggestions to reorganize the police and give them a new face, a new style of functioning, practical independence, strict transparency, and professionalism. The Commission dealt with "Interference with and abuse of police by unlawful or inappropriate orders or pressure from the political executive or other extraneous sources – Remedial Measures" in Chapter XV of their second Report, which was submitted in August 1979. Except for the creation of police associations as a result of a nationwide police agitation, none of the recommendations were carried out, with the exception of the formation of police associations as a result of a nationwide police agitation, which, as far as can be seen, have devolved into support organizations for different political parties. The National Police Commission's third report on the standard of police arrests in India stated that "power of arrest was one of the chief sources of corruption in the police." According to the report, almost 60% of the arrests were either excessive or unjustified, and that such unjustified police activity accounted for 43.2 percent of the corrections department's spending."

The NPC published eight reports from 1979 to 1981. The following are some of the major recommendations centered on the problem of protecting the police from illegitimate political and bureaucratic interference:

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<sup>14</sup> Vishal Kant, Bring Delhi police under Delhi govt, Kejriwal urges Shinde, The Hindu, (March 8, 2021, 9:45 AM) <https://www.thehindu.com/news/cities/Delhi/bring-delhi-police-under-delhi-govt-kejriwal-urges-shinde/article5586393.ece>

<sup>15</sup> Uladzimir Dzenisevich and Maja Daruwala, THE POLICE WE HAVE AND WHERE IT CAME FROM: AN ANALYSIS, [https://humanrightsinitiative.org/programs/aj/police/papers/gpj/police\\_accountability\\_in\\_india.pdf](https://humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf) (last visited Mar 20, 2021).

<sup>16</sup> Section 3 in [ The Police Act, 1861 ].

<sup>17</sup> SUPARNA JAIN & APARAJITA GUPTA, BUILDING SMART POLICE IN INDIA: BACKGROUND INTO THE NEEDED POLICE FORCE REFORMS.

- i. Establishing a Security Commission in each state to ensure that the government exercises its supervision over the police in an open and lawful manner.
- ii. prescribing a selection procedure to ensure the appointment of the best officers to head the state.
- iii. Setting a minimum tenure for these officers to mitigate their vulnerability.
- iv. Amending laws to make arbitrary transfers of police officers without authority null and void; and
- v. Repealing the 1861 Police Act and replacing it with a new Police Act.<sup>18</sup>

None of the NPC's previous guidelines have been adopted. The possibility of losing control of an institution that they had been misusing for so long terrified the entrenched elite. Politicians and bureaucrats have a vested interest in maintaining power and supervision of the police force, as well as in maintaining the status quo. In fact, after the NPC's recommendations, the situation has gotten worse. There has been a massive influx of criminals into the Indian polity over the last few decades. In the late 1990s, the Indian Election Commission reported that 40 members of Parliament and 700 members of state legislatures had criminal records.

**ii. Chief Minister's Conference on the Management of the Criminal Justice System**

On November 13, 1992, the Chief Minister's Conference on the Management of the Criminal Justice System considered the NPC's main recommendations to amend the Code of Criminal Procedure 1973. These recommendations were included in the Code of Criminal Procedure (Amendment) Bill 1994, which was introduced in the Rajya Sabha. The Rajya Sabha passed the bill on 4.5.2005, and the Lok Sabha passed it on 9.5.2005. Other relevant NPC guidelines, such as revising the syllabus for IPS probationers and increasing the number of DCPWs, have also been introduced, and a new Bill regulating private security agencies has since been passed by Parliament and become an Acknowledged Act.<sup>19</sup>

**iii. Prakash Singh v. Union of India: A milestone for police reforms**

In 1996, retired Indian Police Service (IPS) officer and Ex- DGP of Uttar Pradesh and Assam filed a writ petition<sup>20</sup> before the hon'ble Supreme Court for issuing directions to governments to enforce the National Police Commission's recommendations. In 2006, SC issued 7 directives such as:

- a) Continuation of a State Security Commission,
- b) fixed tenure of the DGP,
- c) A two-year term for SPs and SHOs,
- d) separate investigation and L&O functions,
- e) setting up of Police Establishment Board,
- f) establishment of Police Complaints Authority at the state and district level and
- g) National Security Commission at the Centre level.

**iv. The Ribeiro Committee, 1998**

On the directions of the Supreme Court of India in the case of Prakash Singh vs Union of India and others pertaining to implementation of the recommendations of the National Police Commission, the Government had on 25th May 1998, constituted a Committee under the Chairmanship of Shri J.F. Ribeiro, IPS (Retd.). The Ribeiro Committee submitted two reports which were filed in the Supreme Court during 1998 and 1999, respectively. The Ribeiro Committee nodded in the favour of the NPC with certain modifications.

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<sup>18</sup>G P JOSHI, Police Accountability in India.

<sup>19</sup>THE NATIONAL POLICE COMMISSION (NPC) SOME SELECTED RECOMMENDATIONS OF THE NATIONAL POLICE COMMISSION, , [https://humanrightsinitiative.org/old/publications/police/npc\\_recommendations.pdf](https://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf) (last visited Mar 22, 2021).

<sup>20</sup> Prakash Singh v. Union of India (2006) 8 SCC 1

**v. The Malimath Committee, 2000**

The government formed a committee in November 2000, chaired by Dr. (Justice) V.S. Malimath, a former Chief Justice of the Karnataka and Kerala High Courts, to look into and propose steps to revamp the criminal justice system. In April of 2003, the Malimath Committee released its report, which included 158 recommendations. This include the expansion of educational infrastructure, forensic science laboratories, and the Finger Print Bureau, as well as the passage of a new Police Act, the establishment of a Central Law Enforcement Agency to handle federal crimes, the separation of the investigation wing from the law and order wing in police stations, the enhancement of investigation by adding more posts, and the establishment of a Central Law Enforcement Agency to handle federal crimes. Separation of investigation wing from the law and order wing in the police stations, improvement in investigation by creating more posts, etc

The panel proposed for a change to Article 20 (3) of the Constitution, which prevents the accused from being forced to testify against himself. The Committee recommended that the court be given the authority to examine the accused to obtain information and to draw an adverse conclusion against him if he declines to respond. The Committee also believed that the accused should be allowed to file a statement with the prosecutor outlining his or her position.<sup>21</sup> The idea that everyone is presumed innocent unless proven guilty is hailed as a cardinal and pivotal principle of civilized criminal justice administration in the Study.<sup>22</sup> The Committee recommended that the investigative wing be separated from Law and Order. It also suggested that a National Security Commission and State Security Commissions be created. It proposed a few steps to enhance the efficiency of investigations, including the appointment of an Additional Superintendent of Police in each district to maintain crime records, the creation of specialized squads to deal with organized crime and a team of officers to investigate inter-State or transnational crimes, and the establishment of a Police Establishment Board to deal with postings, promotions, and other issues. Police custody is now limited to 15 days.<sup>23</sup>

**vi. Establishment of Police Act Drafting Committee**

In 2005, the central government formed the Police Act Drafting Committee (chaired by Soli Sorabjee) to draft a new model police law to replace the 1861 Police Act. In 2006, the committee submitted the Model Police Act, which was distributed to all states. In response to the new model law, 17 states (Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttarakhand) passed new or amended existing laws.<sup>24</sup>

**4 Legal framework against police brutality**

The Indian Constitution guarantees a wide range of human rights. It enjoys broad public support and is upheld by a strong Supreme Court with a well-known human rights precedent. Article 21 of the Constitution guarantees the right to life, which has been generally interpreted by the courts. India also comfortably accommodates a wide spectrum of religious, linguistic, and cultural diversity. Despite significant obstacles, India manages to maintain a high level of human rights protection, which includes armed movements pursuing various degrees of autonomy, insurgencies, and organized crime, which often kill innocent people.

The Indian Constitution has established certain constitutional requirements by declaring these standards to be fundamental rights of accused persons. The procedural and substantive penal laws represent the constitutional principles in detail. They must be considered not only in the form and way they are chartered in the Constitution and penal laws, but also in the light of the Supreme Court of India's understanding of these rights as announced from time to time.

The Constitution of India in its Chapter III shed the light on the fundamental rights that will be guaranteed to a person in the police custody. Those fundamental rights guaranteed shall include:

In the case of convictions for crimes, Article 20 offers a right against ex-post facto law. Right to be protected against double jeopardy. Right to be free of self-incrimination.

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<sup>21</sup> The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points - The Hindu, , <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589.ece> (last visited Mar 24, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> UPENDRA BAXI, The (Malimath) Committee on Reforms of Criminal Justice System: Premises, Politics and Implications for Human Rights AMNESTY INTERNATIONAL INDIA, 51642501 .

<sup>24</sup> Model Police Act, 2006; Unstarred Question No. 1451, Lok Sabha, (May 3, 2020).

Article 22 states that an arrested suspect has the right to be brought before a magistrate within 24 hours of his arrest.

Article 21 protects individual's right to personal life and liberty. It states that *"No one shall be deprived of his life or personal liberty except in accordance to the procedure established by law"*.

According to Article 14 protects Right to Equality, which states that *"State shall not deny any person equality before the law or equal protection of the laws within the territory of India"*.

The only express restriction on the power of retrospective legislation is that it cannot be retrospective penal law, as mentioned in Article 20(1) of the Indian Constitution. As mentioned in *'Raghuvver v. Union of India'*,<sup>25</sup> the term "law in force" must be understood in its literal sense, and only the conviction based on an ex-post facto law is prohibited. The existence of a new offence with retroactive effect is prohibited by Article 20(1). As mentioned in *Sajjan Singh v. State of Punjab*<sup>26</sup>, it does not preclude the establishment of a new rule of proof or a presumption for an existing offense. It was claimed in another case, *Pulian v. Sathya Narayan*<sup>27</sup>, that the statute under which a person is seeking to be convicted must have been in effect at the time the act for which he is charged was committed. In the case of *State of Maharashtra v. D.M Kothari*<sup>28</sup>, it was held that although the plea of beneficial construction cannot be used to hold an unconstitutional act to be lawful retroactively, it can be used as a mitigating circumstance to be considered while passing judgment. These established precedents have highlighted that such regime of police which leads to the exploitation of rights of citizens can never be established to be constitutional and will remain to be illegal.

## **5 Judicial Approach against the instances of police brutalities**

The accused's right to remain silent during interrogation and prosecution was protected by the Constitution and the courts. The Supreme Court's decision in *Kathi Kalu Oghad v. State of Bombay*,<sup>29</sup> which restricted the scope of the Self-incrimination doctrine to only physical and not psychological violence against an accused, may have been influenced by the related time's law and order compulsions. Article 20(3) described "to be a witness against himself" as activities that happened outside of the court process, such as the disclosure of any incriminating information or facts, even during police interrogation.

In *'State of Maharashtra v. N.M Madhukar Narayan Madhukar'*<sup>30</sup>, it was held by the Hon'ble Supreme Court that under Art 20(1) of the Constitution of India "even a women of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also, it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person, if there is an attempt to violate it against her wish. She is equally entitled to the protections of the law."

The right of the accused to be informed of the grounds of arrest is currently a constitutional mandate in India, according to Article 22(1). "No person who is arrested shall be held in custody without being informed, as soon as may be of the grounds of such detention, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice," the law states. "Arrest is arrest, whatever the reason for it, and the first part of Art 22(1) enjoined an obligation on an arresting person to say the ground of arrest, if made other than under a warrant; and if made under a warrant, the warrant must itself notify the arrested person with the grounds of arrest, so that he can search for the second enshrinement," it was reaffirmed in *Shobha Ram's*<sup>31</sup> case.

In the case of *Vimal Kishore*<sup>32</sup>, it was pointed out that disclosing the grounds of arrest would enable him to prepare for his defence ahead of time and face the case against him. This also allows the accused person the opportunity to file an effective application for bail or, if possible, apply to the competent court for a writ of Habeas Corpus.

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<sup>25</sup> Raghubeer v. Union of India 1962 SC 263.

<sup>26</sup> Sajjan Singh v. State of Punjab 1964 SC 464

<sup>27</sup> Pulian v. Sathya Narayan 1953 Calcutta 599

<sup>28</sup> Maharashtra v. D.M. Kothari 1976 Cr. L.J. 1931

<sup>29</sup> Kathi Kalu Oghad v. State of Bombay AIR 1961 SC

<sup>30</sup> AIR1991SC207

<sup>31</sup> State of M.P. v. Shobha Ram AIR 1966 SC 1910

<sup>32</sup> Vimal Kishore v. State of U.P. AIR 1956 All.56

The fake encounters of 1990s will bring to our attention the horrific picture of violence from the states so called protectors to the civilians .in some cases the so called Protectors of the civilians acting as the encountering hands of the gangsters even though there is no hardcore proof to prove the said allegations by a open look on the events occurred and connection of the dots of what is there in front of us will show the hard reality of what is happened around us then. Although the scope of the problem has diminished, evidence suggests that it still exists. Between 1993 and 2008, there were 2,560 deaths registered during encounters with police, according to the National Human Rights Commission. The NHRC labeled 1,224 of these encounters as "false encounters." "Fake encounters" have been accused of the police, the national armed police services, and the armed forces

Before being brought to the Magistrate, an accused person should not be kept anywhere other than a police station. The accused person must be taken to the Magistrate or Court within 24 hours, regardless of whether the arrest was made with or without a warrant, according to sections 57 and 78 of the Bharatiya Nagarik Suraksha Sanhita 2023. It is well established that a police officer is guilty of wrongful detention if he fails to produce an accused person before a Magistrate within 24 hours of the arrest. Furthermore, Article 22(1) of the Indian Constitution is bolstered by Article 21 of the Indian Constitution, which expressly forbids the deprivation of personal liberty other than by "procedure defined by statute." As determined in *Narayan Singh v. State of Punjab*<sup>33</sup>, this refers to and includes legislation passed by the parliament and state legislatures and falling under their legislative jurisdiction.

The Supreme Court first considered the question of monetary compensation in the case of *Khatri (II) vs. State of Bihar*<sup>34</sup>, also known as the "Bhagalpur Blindness Case." In this case, the police were accused of blinding the prisoners and depriving them of their right to life and liberty. The Court was asked whether a person whose right to life or personal liberty has been stripped away by the government should be rewarded with monetary relief.

Allowing the monetary compensation in the cases of police brutality, the hon'ble court rather than imposing a fine for civil contempt of court, the Court ordered the government to pay each of the two women Rs. 1 lakh "as a measure of exemplary costs as is necessary in such cases" in the case of *Sebastian M. Hongray v. Union of India*<sup>35</sup>.

In the case of *C. Ramkonda Reddy v. State*<sup>36</sup>, it was decided that a claim for compensation against the state could be maintained when a prisoner in custody died because of the inability or negligence of its officers to perform their duties. The Court stated that this is the only way to uphold the right to life guaranteed by Article 21.

The Supreme Court revisited the issue of awarding compensation in cases of police atrocities in '*SAHELI, A Women's Resources Centre v. Commr<sup>37</sup>. Of Police, Delhi.*' In this case, a 9-year-old boy died because of a police officer's attack and beating.

In another landmark case of of '*Nilabati Behera v. State of Orissa*,<sup>38</sup> in which the deceased was taken into police custody and his body was found on the railway tracks the next day with several injuries, is another example of a custodial death. The Supreme Court reaffirmed that if the State's instrumentalities or servants breach constitutional rights, the Court would require the State to make "monetary amends" and restitution to the victim or his successor. The State was ordered to pay Rs1,50,000 in compensation to the deceased's mother.

In *R.D. Upadhyay v. State of AP*<sup>39</sup>, another case that illustrates the sad situation when it comes to prisoners' human rights. In this case, the Court was informed that a lunatic on trial had been incarcerated for more than 30 years with no action taken by the ACMM Court or the jail authorities. Medical treatment was also only given after the High Court intervened. As a result, the Constitution's Article 21 had been fully violated.

The usage of third-degree torture for getting the truth is violative of human right how much ever grievous the crime may be each individual deserves a fair interrogation and fair treatment. In *State of Andhra Pradesh v. N. Venu Gopal*<sup>40</sup> and *State of Maharashtra v. Atma Ram*,<sup>41</sup> two similar cases of custodial torture and third-degree methods were

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<sup>33</sup> AIR 1952 SC 106 Cr.L.J. 656

<sup>34</sup> (1981) 1 SCC 627

<sup>35</sup> Sebastian M. Hongray v. Union of India, (1984) 3 SCC 8

<sup>36</sup> AIR 1989 AP 23

<sup>37</sup> (1990) 1 SCC 42

<sup>38</sup> (1993) 2 SCC 746

<sup>39</sup> (2001) 1 SCC 43

<sup>40</sup> State of Arunachal Pradesh v. VenuGopal AIR 1964 SC 1986

<sup>41</sup> State of Maharashtara v. Atma Ram AIR 1986 SC 1786



lodged, with a plea on behalf of the police personnel accused of custodial abuse that the action against them was prohibited by restriction, highlighting the correct stance in relation to "unwarrantable personal violence to any individual in custodial custody." The Supreme Court, however, overruled the High Courts in both cases, holding that "torture cannot be considered an operation committed under the Acts, and the immunity of these Acts (in terms of the ban on prosecution) only extended to what was done under the provisions of the respective Police Acts."

While any police officer has the legal right to interview or detain any suspect based on credible evidence, the Supreme Court clarified in *Bhagwan Singh and others v. State of Punjab*<sup>42</sup> that such an arrest must be made in accordance with the law, and questioning does not mean causing injuries. Hence proving the point that interrogation should be fair and without causing injury to the person who is being interrogated.

The procedure to be followed when investigating cases of police incidents resulting in civilian deaths was set out by the Hon'ble Supreme Court in *PUCL v. State of Maharashtra*<sup>43</sup>, the Hon'ble Supreme Court laid down certain guidelines:

The guidelines laid down were

- a) An FIR must be lodged if a lawsuit is filed. According to legal precedent, police officers do not have the authority to refuse to file a FIR. The sincerity, veracity, and other aspects of the FIR cannot be decided at the registration point. It is also not required that the officers involved be identified in the FIR.
- b) Following the filing of a FIR, an investigation must be initiated. The investigation could determine that (a) no killing occurred, (b) the killing was justified as an exercise of one's right to self-defence, or (c) the killing was not justified and therefore unlawful.
- c) A Judicial Magistrate is not required to comply with an investigative report concluding that the killing occurred during the exercise of one's right to self-defence. If the Magistrate believes that this is not conclusively proved, she will take cognizance under section 210 of Bharatiya Nagarik Suraksha Sanhita 2023.

## 6 CONCLUSION AND SUGGESTIONS

No one should be granted unrestricted powers in a democracy, regardless of the circumstances. When law enforcement officers commit brutality and atrocities on person, it has potentially dangerous consequences. This can also work against the very intent of deploying security forces. Human rights organizations' demands are clearly not music to the ears of the government or security personnel who don't give a damn about these facets of their responsibilities.

Certain constitutional and human rights cannot be infringed upon while enforcing any substantive or procedural penal laws to resolve an issue or to prove any one's guilt. Without a doubt, all such substantive and procedural laws have built-in mechanisms of checks and balances to ensure that, on the one hand, the implementation of penal laws is in the best interests of the society at large, and, on the other hand, just, equitable, and rational processes are followed in all such endeavours to protect the accused persons' interests.

Policing and human rights have a direct and interdependent relationship which is very necessary. In the case of police and human rights, one of the ways in which the state tries to fulfil the duty to uphold "Fundamental Human Rights" such as right to life, liberty, and security of individuals, as well as the right to a fair trial and equal treatment under the law. On the other hand, indiscriminate and illegal policing can only lead to the suppression of certain "Human Rights" which can remove the belief of people in the system and law. It is often observed as a paradox that human rights are protected by law but are often jeopardized by law enforcement the executive branch which is granted the price it doesn't mean that the law makers do not have any role in this, they too play their part.<sup>44</sup>

The following suggestions are made to make police actions more people friendly and to stop police atrocities:

- The criminal justice system in India needs to enact policies that encourage crime victims to engage fully in the criminal justice system. Such policies must represent the belief that our justice system exists not in spite of its victims, but rather because of them. Victims of atrocities that are suspected of them committing a crime are also included.

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<sup>42</sup> Bhagwan Singh v. State of Punjab 1992 SCJ 364

<sup>43</sup> CDJ 2014 SC 831

<sup>44</sup> D.K Basu Human Rights and Custodial Crimes , a Central Detective Training School Kolkata Publication .

- Victims' overwhelming desire to participate in the prosecution and resolution of a criminal case stems from a desire to promote equal and sensitive treatment of victims, to have their participation in the justice process recognized, and to alert the justice system to the mental, physical, and financial effect of crime on its victims and our country.
- At the national, state, and local levels, legislation must be enacted or amended to give crime victims the ability to send victim impact statements through written, oral, visual, audio, or other electronic means to sentencing and parole authorities.
- A robust regulatory system for victim compensation is important. In India, a "Compensation Board" is required, as well as prompt resolution of cases involving crime victims and deaths in police custody.
- In the event of a delay in the investigation or prosecution of the case, the victim should be compensated based on the merits of the case and the case's final disposition.